



## Land Tenure System in Nigeria and the need for Environmental Sustainability

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### Abstract

Land tenure systems under secular and customary systems were examined for their significance in land use and climate change mitigation. The review explored the customary land ownership and ownership under the secular system. It found that under the customary law, the land is vested in the community or family and no one has the right to alienation. The land is seen as an inheritance held in trust for the dead, the living and the unborn. The Customary court is established to litigate land cases under customary land ownership. Under the secular system, land is governed by the 1978 Land use Act that vests land in the State. The secular system presents some difficulties in land acquisitions and administration due to bureaucratic bottlenecks and corruption. Therefore, the authors advocate for the strengthening of both systems so that the strengths of both can be harnessed. That way the revenue of the State from land administration could be enhanced, conservation promoted and land degradation minimized. Biodiversity conservation is critical to climate change mitigation and maintenance of environmental quality.

**Keywords:** Land tenure, customary, land-use, climate change, conservation

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*Received:* 10<sup>th</sup> Sept, 2021      *Accepted:* 25<sup>th</sup> Feb., 2022      *Published Online:* 28<sup>th</sup> Mar, 2022

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### Introduction

Land is a key asset for livelihood and development not only in Africa (Kironde, 2009) but globally as there is virtually nothing man does that is not rooted on it; his house, crops and others. It is a crucial factor of production though fixed in nature as it is immovable and comprises the physical terrestrial surfaces, real estate or property designated by definite geospatial boundaries. There are diverse concepts of lands ranging

from land as space, as nature, as a factor of production, as situation affected by accessibility and demand, as a consumption good, as capital, as a deity, as gene bank and as property (Bugri, 2020). It is very crucial to man that without it there could scarcely be life (Chigbo, 2013) and supports the livelihood of about 60% of African population through farming, livestock production and the likes (Kironde, 2009). As Henry George rightly asserted that land is

where man lives, the storehouse for all his needs, the base or raw material to which he applies his labour to get all his needs (George, 1879). But, because the land is fixed, it is subject to the law of diminishing returns and therefore requires economic analysis and decisions in its utilisation more so as it requires legal backing to secure it.

As an important resource and one so critical to man's survival, it ought to be highly-priced/valued and taken adequate care of to ensure its sustainability. Our ancestors did so as shown by history, for instance, the Greeks worshipped the earth goddess and in African, many communities and tribes worshipped and still worship the earth (Handy, 1939; Primavesi, 2000) and do sacrifices to it before the onset of growing season for bumper harvests and did repeat it at harvest time in appreciation for good produce. The same reverence for land is not replicated by the contemporary world. However, it could be argued that the people of old did so because of the limitations they lived with at their time while the contemporary man had advanced scientifically and technologically to tame the land to achieve his needs. It could be said that the people of the world of old lived with environmental determinism where what they did and achieved was dictated by the natural environment while the contemporary world lives in an era of environmental possibilism wherewith the advanced technology they can tame virtually every natural environment to achieve their goal because there are possibilities everywhere (Taylor, 1942; Fekadu, 2014).

Nevertheless, the land has a carrying capacity which ought to be respected no matter the era. Owing to this, in the 17<sup>th</sup> century, Malthus postulated population theory that human tend to outgrow the productive capacities of the land resources (Marquette, 1997; Galor and Weil, 1999; Ashraf and Galor, 2008) and opined that population need to be checked and one of his suggestions was pestilence befalling man to reduce the population. Currently, man is being ravaged by COVID-19 virus which has been argued to be a result of man's overexploitation of biodiversity and the land resources (Corlett *et al.*, 2020; Rohr

*et al.*, 2019; Zambrano-Monserrate *et al.*, 2020). But Malthus' pessimistic views could not come to pass due to technological advancement (industrial revolution) and the discovery of new lands (America, Australia, Africa). Unarguably, land should be sustainably utilised to meet the needs of the present age and that of posterity. There has been a sustained call to this effect ranging from the 2030 Agenda of the SDGs, REDD+ to IPCC established to update knowledge on climate change and suggest mitigation and adaptation measures.

The importance of land and its fragile nature notwithstanding, the kind of reverence accorded it by people of old could hardly be replicated because the old did that because they were handicapped but the contemporary world is equipped with technology and much knowledge. However, the crucial need of land did not diminish with technological advancement but it can be put to higher productivity from a small parcel while a substantial part is utilised for siting industries and settlement as urban centres keep rising globally. More so, it did not diminish the fact that land has carrying capacity which should be respected and form a critical policy decision in planning and the use of land. Thus, the intensive utilisation of land by man for agriculture, urban space among others has created new problems such as deforestation, soil erosion, flooding, biodiversity encroachment, extinction and endangering many other species.

Thus, the question now is which is the better way to land governance between the customary and the modern systems and the interplay of the two for land use and climate change. To take a position on either of the two, both will be explored in greater detail in the following subsections to discern their strengths and weaknesses, and their interplay to land use and climate change. It is discussed under the Nigerian context. The write-up is divided into five sections comprising an introduction, the customary land governance, the modern or secular land governance, the interplay of the two with regards to land use and climate change and finally the conclusion.

### **The Customary land governance**

#### 10 ***Background of the Customary Law***

Customary law refers to a body of customs, practices including norms and rules which are principally unwritten and transferred orally from one generation to the next, which the people recognise as governing them in their affairs between and among themselves and things (Asiedu-Akrofi, 1989; Ikejiofor, 2009; Mukoro, 2011; Epiphany and Azoro, 2013). Hence, it is reliant on testimonies of chiefs and elders who are sound in the people's custom and thus it is a dynamic living law of the indigenous people (Asiedu-Akrofi, 1989; Olubor, 2015). It has been argued that the Customary Court regulates the lives of about 80% of Nigerians (Olubor, 2015). It is a creation of the States such that in the northern part of the country it is called Area Courts but, in the south, it is called the customary Court.

Before 1978, the Nigerian land tenure was governed by several different legal systems (Epiphany and Azoro, 2013). They were the customary law in the south hinged on collective ownership among families and communities or social groups; the Islamic and Custom in the north; and two separate systems of the British colonial law-common law private ownership in the south and crown ownership in the north. It was believed that the multiplicity and disparity in these legal systems hamper investment and to facilitate development and equitable allocation of land among citizens, the Land Use Act of 1978 was enacted which vested urban lands in the hands of the State governors (Butler, 2019). Thus, in urban areas, all pre-existing types of land rights were overridden and landholders only need to obtain a statutory right of occupancy to affirm ownership (Butler, 2019; Maduekwe, 2014). In the rural areas, the Customary land rights are preserved under the law and 'customary' rights of occupancy may be obtained. The right of occupancy is simply State-lease of up to 99 years to the landholder (Butler, 2019).

Customary law is largely unwritten norms that guide and regulate the dealings of

Nigerian people, and therefore, forms one of the sources of Nigerian law (Epiphany and Azoro, 2013; Maduekwe, 2014). The law emanated from their heritage and culture. The people have much regard for it and any contravention attracted no small punishment such as sacrifices for the appeasement of the gods or ostracising and banishment. In the pre-colonial era, the law was administered by the traditional rulers such as the Elders, Chiefs, Obas and Emirs (Maduekwe, 2014). The arrival of the colonialist led to the establishment of formal courts of the English legal system. However, upon realising the significance of the customary courts to the people, they streamlined them to the formal legal system by creating customary courts where those laws that are worth retaining were administered (Epiphany and Adediran, 2012; Maduekwe, 2014). One of the greatest challenges to its application has been the multiplicity of its establishment to meet the over 250 ethnic nationalities (Maduekwe, 2014).

#### ***The Land Tenure System***

The land tenure system is a legal term implying the right to hold rather than merely holding land (Bruce, 1998) and these include the rights to use, control and transfer land ownership which governs who and how long and the conditions the land is held, used and transacted (Adams *et al.*, 1999; Garvelink, 2012; Maduekwe, 2014). Such tenancy can be freehold, leasehold, conditional, collective or communal but are guided by systemic rules that specify what each stakeholder or group must or must not do regarding the tenancy; abuse or disposition of land and defines the privileges, rights and duties of all stakeholders (Famoriyo, 1979; Maduekwe, 2014; Smith, 2008).

Therefore, the customary land tenure system is a system of landholding that is indigenous to the Nigerian people (Smith, 2007). Under the customary land system, it is vested in the community or family such that every member has an equal stake in the community or family land and no one could alienate any member and the right to land might be perpetual, for a certain period (farming) or the lifetime of the holder (Arua and Okorji, 1997). In many

Nigerian communities, the land is governed by the customary laws of the individual community based on its culture and peculiarities. The land is viewed in most communities as a corporate commodity jointly owned by the community or family though, in a few isolated occasions, it could be owned by an individual. The individual land ownership is very similar to the English freehold system but was relatively smaller than the community or family ownership (Adeniyi, 2011).

The key principle in customary landholding is that land is an ancestral trust which the living shares with the dead and the unborn, so land is inalienable (Amankwah, 1989). Before the arrival of the colonialists, two customary landholding systems obtained in Nigeria are the northern approach which is distinct from the southern. In the north, the land is administered by the Emirs while in the south, the land belonged to the village, community, families with chief or headman as the manager or caretaker never the owner as the absolute ownership is vested on the whole community (Maduekwe, 2014). The customary rules in the south varied in applications from one community to the other (Omotola, 1982).

The colonial masters signed a treaty King of Lagos that changed the dual land tenure system of the Nigerian people into four tenure system (Maduekwe, 2014). These included the tenure under the English Law, that under State Land Laws, tenure under Land tenure law and tenure under Customary Law thereby introducing complexity to land tenure system in Nigeria (Maduekwe, 2014; Oshio, 1990).

**Tenure under Customary Law:** The Customary law was still applied to the right to land ownership in the south until the colonialist arrived. The colonialist in 1916 signed the Niger Land Transfer Ordinance which introduced individual land ownership which was registered with the government (Maduekwe, 2014; Udoekanem *et al.*, 2014). Under the customary land tenure, the land was seen as a community property where it can be held in trust by an individual to farm and could possess it as long as it is used to the

benefit of the family or community or may pass it to his heirs but never for sale no matter his pressing situation (Maduekwe, 2014). The right for disposal belonged only to the community or family (Maduekwe, 2014) and in most cases before the arrival of the British colonialist, the land was inalienable. It is ancestral and can't be severed for any reason whatsoever.

However, there is a Customary pledge where the owner-occupier can secure a loan with his land in which case the creditor becomes in possession of the said land until the debt is defrayed. The pledgee has no right whatsoever to sell the land even when the pledgor is unable to pay back the debt (Maduekwe, 2014). Alienation of land is another dimension which is foreign to the system. Because Land is the property of the community and at no time should anyone sell a portion and to sell land was a taboo in the people's custom. But the arrival of the colonialist changed the whole thing, instituting a system that empowered individual land ownership. Hence, land under individual ownership can be alienated by the owner; however, for the communal land, it can only be done based on agreement by all the community members and any contravention to this is voided under customary law (Maduekwe, 2014). Prescription: This is foreign to the customary tenure system though, it is still observed in the form of ease of flows like the right to free flow of light and air, right of way, right to free flow of a natural or artificial stream or riparian right, and right to lateral support as is enshrined under common law (Chigbo, 2013; Maduekwe, 2014). This exists in the form of a farmer using footpath that cut across neighbour's farmland to reach his own, passing through neighbour's farm to reach streams or lake to get water.

Customary landholding in Nigeria can be divided into two: the communal landholding and family landholding. However, the family handholding predominates especially in the eastern part of the country (Ikejiofor, 2009). The customary landholding may also be classified in terms of those whose ownership stem from an inheritance from their forebears

and those theirs came from additional acquisition from other customary holders from purchase or pledge or lease as an exchange for financial assistance (Ikejiofor, 2009). Non-indigenous landholders are always few and where they exist, they obtained their land for speculative purposes or to build for rent or self-occupation. Moreover, to substantiate their ownership, they did obtain a certificate of occupancy from the State (Ikejiofor, 2009).

#### ***Customary land governance, environmental and land management***

Land management in the traditional setting or under customary tenure system is a serious business. First, because the land is highly revered among the community as it is seen as a heritage held in common both for the living, the dead and the yet to be born (Bugri, 2020; Ikejiofor, 2009). Secondly, it is the base for their livelihood providing food, water, shelter and source of wealth. In the core traditional setting, abuse of land is not tolerated and it is met with a severe penalty as it is seen as a taboo. Thus, every member of the community treats land with respect.

Agriculture is never done intensively on a particular land but with the practice of fallow or shifting cultivation, a given land is given room to regenerate for some years before it is subjected to cropping again. This system of farming does not expose farmland to soil degradation at least to a level experienced in modern times. However, one may argue that it was practised by the customary landholders then because there wasn't the same level of population pressure on land as it is now. For instance, Bugri (2020, verbal communication in class) gave an instance of a rocky community in Ghana where many people who migrate out of the harsh environment are majorly environmental refugees than economic migrants. When they were few, they could manage to keep up with their lives, however, with increasing population and the associated pressure, they have no other options but to migrate to the urban setting in search of jobs. Additionally, it can be stressed that life of luxury in modern times did not exist in the traditional setting and as such, they lived a fulfilled life of contentment with

what nature provided for them. Hence, it can be said that pressure on land is not only about population explosion but is compounded by the desire to acquire more for luxury life among city dwellers.

The customary tenure system indirectly practised conservation in a type that was more efficient than the modern way of conservation. There was expanse of lands regarded as sacred lands (evil forests) for which it is taboo to even enter or penetrate let alone killing an animal in it or fetching firewood in it. It was respected by the community members and beyond and such lands are always rich in biodiversity including microbes. Nobody dared enter the forest because the belief was that some of them had the potent to kill anyone who violated it. As such, they were a huge resource base. However, the advent of the Europeans changed all this as they used their bulldozer to clear such forests and unsurprisingly that is where most of the earliest missionary schools and Government Reserve Areas were situated.

The weakness of the modern land governance has been highlighted in the literature where such deficiency is been ameliorated by the role of the customary landholders for instance in Enugu urban periphery of Enugu State (Ikejiofor, 2009). Such efforts include orderly layouts, registered land transfers, develop guarantees of tenure security (Ikejiofor, 2009). The problem with modern land governance may likely continue with the rapid rate of urbanisation under conditions of widespread poverty. As a result, many have called for the amendment or interrogation of the current system (Cousins *et al.*, 2005; Ikejiofor, 2009; Maduekwe, 2014; Udoekanem *et al.*, 2014).

#### **The modern or secular land governance**

The modern system of landholding started with the arrival of the colonialists to the shores of the country. They signed a treaty and enacted laws that permitted individual system of landholding though in conjunction with the customary system as has earlier been discussed above. The English system was maintained until after independence when the leaders felt that the system of landholding in

the country needed to be harmonised with the promulgation of the Land-use Act of 1978.

### ***The Land-use Act***

The plural system of land tenure posed many difficulties to the government and most Nigerians to acquire land for development purposes and personal investment and profiteering (Otubu, 2007). The Act resulted in the nationalisation of land, divesting of citizens of their hitherto right of ownership to land while vesting it in the State (Maduekwe, 2014; Udoekanem *et al.*, 2014). The traditional institutions opposed to the Act and called on the government to suspend or rescind the Act in the interest of the Nigerian public. The Act created the right of occupancy which is divided into two- one is the statutory rights of occupancy that is conferred by the Governor of a State and the second is the customary rights of occupancy conferred by the Local Government (Umezulike, 2011). Also, the Act included that 'no alienation is valid without the consent of the Governor of a State and no court has the jurisdiction to look into any question with regards to the vesting of all lands in the Governor, right of the Governor or Local Government to grant a statutory or customary right of occupancy the amount of compensation payable.' (Umezulike, 2011) The Act excessively empowered the Governor with a certain, wide and judicially uncontrollable power of revocation (Maduekwe, 2014; Udoekanem *et al.*, 2014).

### ***Modern land governance, environmental and land management***

The modern system of land governance empowered individual or private ownership of property which is alien to the culture of the people. More so, private ownership with minimal control or monitoring results in abuse of the land such that an individual uses his land to whatever purpose except where it expressly contravened State law. The implication is that the land is degraded more under the system than the customary landholding system. In fact, except for the current age of global environmental threats like incidences of strange diseases like COVID-19, Ebola (Corlett *et al.*, 2020; Rohr *et al.*, 2019; Zambrano-Monserrate *et al.*,

2020), the man might not have realised that abuse of land has severe consequences. Yet, even with the realisation of the threat to man due to land degradation, he has not been able to arrest the ugly situation partly because he does not revere land the same way the customary landholder view it or partly due to the belief that technology could solve all problem or because he is incapacitated by the prevailing circumstances.

Furthermore, owing to bureaucratic bottlenecks in acquiring lands formally (Udoekanem *et al.*, 2014) which increase the time and monetary costs including informal costs such as bribes or gifts (Ikejiofor, 2009), only a few might be able to acquire land formally or in part formally develop the obtained land. As a result, informal, illegal, unplanned or unauthorised developments characterise the urban space (Egbu *et al.*, 2008; Ikejiofor, 2009). The dominance of informal development in Nigeria's urban space is supported by Arimah and Adeagbo (2000) who found that 83 percent of housing developments in a middle-income neighbourhood in Ibadan were unauthorised. The consequence of this is a disastrous environment which may reflect in blockage or narrowing of road access, obstructing drainage and the consequent increase in urban flooding including structure/building collapse.

### ***The interplay of Both: Benefits or shortcomings with regards to land use and climate change***

The interest here will mainly lie on how the Land use Act has impacted the customary land governance. A pertinent question that might spring up is; does customary land tenure system still really exist or should it exist and if so, then to which extent? (Maduekwe, 2014). The Land Use Act seems to have brought confusion to the administration of the customary land tenure system. One, it became beclouded in uncertainty as to whether customary law land tenure still exists or abolished by the Act (Maduekwe, 2014). The Act moved lands from customary land tenure regime to that of legal tenure converting the rights held under customary tenure to merely rights of

occupancy (Maduekwe, 2014). Thus, the customary landholder's right depended on the situation of the property whether urban or rural or developed or non-developed. In either situation, the landholder's title is converted to deemed right of occupancy-statutory (urban area) or customary (rural area) in as much as the land was held before the Act was enacted (Maduekwe, 2014). However, should the land situate in the rural area, the customary landholder could not exercise control over land over 500 or 5000 hectares respectively without the governor's consent (Maduekwe, 2014) and such land is inalienable.

Then, one may ask, under the Act, does the community leader or traditional ruler still has the right to allot land to his members without reference to the State governor? However, yes, he still has the right to do so since the allocation of parcels to his members does not entail the transfer of ownership (Maduekwe, 2014). The land still belongs to the community under customary land governance. It is granted under the customary law for the community to at-will partition lands among community member. However, since such partition implies the transfer of ownership, the consent of the governor or the local government chairman is required since it involves alienation of right of occupancy. Therefore, the sale of land by the community does not exist any longer since it is now vested in the State (Maduekwe, 2014). Therefore, there is lots of illegality in the administration of land in the system as many lands are sold by community or families without the State's consent. This is promoted by the endemic corruption in the system.

This supposed confusion was cleared by the Supreme Court in its ruling in a case involving *Abioye v. Yakubu* that the Act did not expressly divest customary rights of the owners of agricultural land in rural areas as it did in the case of undeveloped land of over a hectare in an urban area (Maduekwe, 2014). Again, unless expressly intended to do so, a statute should not be construed to interfere with established private rights under contracts or the title to property or to deprive a man of his property (Abugu, 2012).

Furthermore, the identified gross indiscipline and corruption in high places make land in modern system inaccessible to many citizens. For instance, in Enugu, there has been no advertisement of layouts for sale from 2005 to 2009 yet land is still being allocated through secretive bureaucratic procedures (Ikejiofor, 2009). It has been asserted that only paltry 12 percent of applicants for government-approved land received parcels allotted to them leaving the rest to meet their need from the customary landholders (Ikejiofor, 2009).

In addition to the so much time it takes to obtain land from the State, it also costs a lot as has been stated earlier. According to Ikejiofor (2009), it requires payment at 15 different points in the process of obtaining land from the State. This is outside the kick-backs to be given away to facilitate faster processing of the documents. These formal payments are no small amount, for instance, one of the payments; the development premium is calculated at the rate of 130 dollars per square metre of the property as at 2007 (Ikejiofor, 2009). Meanwhile, the monthly salary of an average civil servant in a State receives 230 to 310 dollars (120,000 Naira) which is far below the total official fees for a standard plot in high built areas (Ikejiofor, 2009). This, costs coupled with endemic corruption and delays in the process of allocation, means most of the citizenry cannot afford it.

However, modern land governance is a substantive source of internally generated revenue for the government through sale, issuance of certificate and rent. Though the customary system still holds under the Land Use Act, it is always necessary to authenticate and formalise such acquisition with the State in which case certain payment is made to get a certificate of occupancy. Hence, harmonising the two systems is recommended but corruption must be eliminated so that efficient functioning of the new approach will attract much revenue for the government while bringing succour to the people who pass difficulty to register or buy land. That will also ensure the pursuance of master plans in the development of our cities

rather than the haphazard development and erection of structures with its consequences such as blockage of road, incessant flooding and collapse of structures.

### Conclusion

The customary landholding still exists under the modern land tenure system of the Federal Government. However, instead of achieving the intended goal of a unified land tenure system, it seems to have created more confusion to an already existing seemingly stable system (Maduekwe, 2014). Therefore, the Land Use Act should be amended to streamline with the reality of the people's custom to present a clear non-confusing system of land tenure (Maduekwe, 2014). Additionally, some of the bureaucratic bottlenecks should be eased for Nigerian people who want to acquire land from the State.

It must be added that the two, working hand in hand is good to minimise the volume of litigation that might ensue from the customary system if left alone. However, a transparent agency in charge of land to liaise and collaborate with the customary system might be created. If such a body is dedicated to its assignment, it will align well with the customary land governance and facilitate land acquisition for Nigerians and invariably increase the revenue generated for the State. It will harness the sustainable management of land including conservation measures observed by the customary system. Furthermore, corruption should be rooted out of the system to enable land ownerships and transfer have a smooth process in the country. Again, the two working together is better combining the strengths of the customary landholding with that of the State to promote land governance in the country. Therefore, the authors strongly support the working together of the two for the common good of the citizenry. For the peaceful management of land in the communal system is often hampered in locations with ever-increasing population size. As the carrying capacity of the land is been exceeded by the increasing population in the community, there is bound to be clashes among members as to who should be allotted a portion and who should

not. In some cases, it often leads to deaths but if the management is aligned with a monitoring authority, such a situation can be curbed by State's intervention as the owner of all lands.

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